

UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF MICHIGAN -- SOUTHERN DIVISION

FRANK SWEET,

Plaintiff,

-vs-

EMPIRE AUTO SOLUTIONS, LLC,

Defendants.

Case No. 2: 17-CV-13699-RHC-APP

Hon. Robert H. Cleland

Magistrate Judge: Anthony P. Patti

**STATUS REPORT**

On November 14, 2017, Mr. Sweet filed a complaint for violations of the Telephone Consumer Protection Act (“TCPA”). He has served Charles Butler (R.4), Empire Auto Solutions, LLC (R.7), and Ruben Gutierrez (R.8) to date. He has also voluntarily dismissed Brittany Ray and Sherry Doe (R.13) as he was unable to effectuate service of those Defendants. He then secured the Clerks entry of Default of Butler, Empire, and Gutierrez. (R.6, R.10, and R.11.)

On March 5, 2018, he moved to open discovery to discover the volume of calls to his cellular phone for purposes of liquidating damages. To date, he has served subpoenas upon the following entities:

Third Party	Subpoena Request	Status
Bandwidth.com, Inc.	For phone records of Defendant's phone numbers (855) 999-9122 and (800) 621-8042 that were hosted by this telecommunications carrier for a portion of the relevant period at issue.	Due to a clerical error, Plaintiff re-served the subpoena on August 3, 2018 and anticipates receiving a response within 30 days.
BBB	Plaintiff served subpoenas for consumer complaints to identify other source phone numbers used by Defendants for purposes of issuing discovery as to potential volume of calls to Plaintiff.	Plaintiff received copies of consumer complaints regarding call volume and Defendants' attempts to address the complaints. Plaintiff is currently reviewing the records to identify additional phone numbers used by Defendants to call consumers.
GoDaddy	Defendants operate at least two websites through domain host, GoDaddy. Plaintiff served subpoenas to identify other phone numbers that Defendant's use to effectuate their business. Those phone numbers could potentially also have been used to call Plaintiff.	Plaintiff received GoDaddy's response on August 1, 2018 and currently reviewing the response to identify additional phone numbers used by Defendants to call consumers.

GrassHopper	For phone records of Defendant's phone number (800) 621-8042 that was hosted by this telecommunications carrier for a portion of the relevant period at issue.	Plaintiff's review of these records indicate that phone number (800) 621-8042 was potentially a pass-through phone number that Defendants used; a phone number where they staff would transfer consumers to after successfully connecting with a consumer.
Level 3 Communications	For phone records of Defendant's phone number (844) 213-4104 that was hosted by this telecommunications carrier for a portion of the relevant period at issue.	Plaintiff continues to follow-up with Level 3 Communications for their subpoena response. Plaintiff forwarded a check for their efforts months ago but has yet to receive a response. On August 1, 2018, Plaintiff followed up again and anticipates a response within 30 days.
Namecheap	Defendants operate at least one website through domain host, NameCheap. Plaintiff served a subpoena to identify other phone numbers that Defendant's use to effectuate their business. Those phone numbers could potentially also have been used to call Plaintiff.	Plaintiff received a response that indicated NameCheap does not maintain account-holder level information and directed Plaintiff to Webflow. As of the filing of this status report, Plaintiff served a subpoena upon Webflow.

NuWave	For phone records of Defendant's phone number (844) 213-4104 that was hosted by this telecommunications carrier for a portion of the relevant period at issue.	NuWave resold the phone number to XCast Labs, Inc. Plaintiff served a subpoena upon XCast Labs, Inc for account holder information.
J2 also known as TimeShift	For phone records of Defendant's phone number (888) 582-7775 that was hosted by this telecommunications carrier for a portion of the relevant period at issue.	After reviewing the subpoena response, on July 23, 2018, Plaintiff served a follow-up subpoena requesting all call records to Plaintiff's cellular phone number. On August 3, 2018, Plaintiff and J2 convened telephonically to discuss J2's request for an extension, their system capabilities and abilities to comply with the subpoena request, and scope. Plaintiff anticipates receiving a response within 30 days.
Verizon	Plaintiff served a subpoena for Plaintiff's phone records in an attempt to identify the volume of calls that were captured <sup>1</sup> by Plaintiff's cellular phone carrier.	Plaintiff is in the process of reviewing the call records and comparing them to notes of Defendant's phone calls to isolate those records and identify the true source <sup>2</sup> phone number that Defendants use to call consumers.

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<sup>1</sup> The volume of calls that are captured by Plaintiff's cellular phone carrier will be less than the volume of dials made by Defendants to Plaintiff's cellular phone. Damages under the TCPA are applicable to the volume of dials by Defendants.

Virtual PBX	For phone records of Defendant's phone numbers (855) 999-9122 and (800) 621-8042 that were hosted by this telecommunications carrier for a portion of the relevant period at issue.	Plaintiff received a response confirming the proper parties have been named and also identifying additional responsible parties. Plaintiff is in the process of reviewing the call records to isolate those records affiliated with calls to Plaintiff's cellular phone.
West Corporation	For phone records of Defendant's phone number (844) 213-4104 that was hosted by this telecommunications carrier for a portion of the relevant period at issue.	NuWave resold the phone number to XCast Labs, Inc. Plaintiff served a subpoena upon XCast Labs, Inc for account holder information.
XCast Labs, Inc.	For phone records of Defendant's phone number (844) 213-4104 that was hosted by this telecommunications carrier for a portion of the relevant period at issue.	Plaintiff is in the process of reviewing the XCast Labs subpoena response to isolate records related to Plaintiff's cellular phone number. The records produced exceed 86,000.

Due to the nature of the telecommunications industry, the tendency to resell phone numbers multiple times over, the records necessary to liquidating Plaintiff's damages are not easily attained. Plaintiff continues to diligently serve discovery designed to secure the records in as efficient a manner as can be expected given the

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2 Certain telecommunication carriers and technology allow Parties to call consumers via a disguised ("spoofed") phone number.

circumstances. Because Defendants continue to ignore the litigation, despite service of the summons, complaint and docket filings since, Plaintiff is left to discover the information necessary on his own – a time-consuming endeavor.

For these reasons, Plaintiff requests an additional 90 days of discovery.

Respectfully Submitted,

By: s/ Sylvia S. Bolos  
Sylvia S. Bolos P78715  
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Dated: August 6, 2018

**Certificate of Service**

I certify that on August 6, 2018, I served this document on the following parties by the means indicated:

**Party**

**Manner**

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Charles T. Butler 8786 Vinmar Avenue Rancho Cucamonga, CA 91730; and 23612 El Toro Road X Box 256 Lake Forest, CA 92630	US First Class Mail and electronical email: <a href="mailto:cbutler@empireconsumerservices.com">cbutler@empireconsumerservices.com</a> and <a href="mailto:charlestbutler@gmail.com">charlestbutler@gmail.com</a>
Ruben Gutierrez 1133 South Nantes Avenue Hacienda Heights, CA 91745	US First Class Mail
Empire Auto Solutions, LLC c/o Ruben Gutierrez 1133 South Nantes Avenue Hacienda Heights, CA 91745	US First Class Mail

Respectfully Submitted,

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Sylvia S. Bolos P78715  
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Dated: August 6, 2018